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REGIONAL CO-OPERATION

PREPARATION OF THE PROGRAMME FOR THE SECOND UNITED NATIONS TRANSPORT AND COMMUNICATIONS DECADE IN AFRICA, 1991-2000

Report of the Secretary-General

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* A/45/50.

I. OVERVIEW AND SUMMARY

1. The present report is submitted pursuant to General Assembly resolution 43/179 of 20 December 1988, in which the Assembly declared the period 1991-2000 the Second Transport and Communications Decade in Africa. In the same resolution, the Assembly requested the Secretary-General to undertake the necessary preparatory arrangements for the Decade and to submit to the Assembly, through the Economic and Social Council, a progress report at its forty-fourth session, and a final report at its forty-fifth session. The progress report was prepared and submitted to the Assembly at its forty-fourth session (A/44/255-E/1989/62), and note of it was taken in decision 44/455. The present submission is the final report, which provides a summary of the major activities undertaken since the progress report.

2. The preparatory activities for the Second Transport and Communications Decade in Africa were set in motion by the definitive decision taken by the Conference of African Ministers of Transport, Communications and Planning at its sixth meeting, at Kinshasa in March 1988, when it adopted resolution 88/73 calling for the second Decade programme. This decision was based on the results of the evaluation of the programme of the first Decade, which pointed out that one of the major shortcomings of that programme had been inadequate planning and design of the programme, including lack of criteria and mechanisms to assign priority to and assess the projects. Thus, several preparatory activities were undertaken during 1989, culminating in the approval, by the Conference of Ministers at its seventh meeting, held at Tangiers, Morocco, in November 1989, of the objectives, strategies and guidelines for the preparation and implementation of the programme for the second Decade. Some of the recommendations and instructions from the Ministers have already been carried out.

II. PREPARATORY ACTIVITIES

3. The Inter-Agency Co-ordinating Committee of the Second United Nations Transport and Communications Decade in Africa has held three meetings since the declaration of the Decade in order to prepare the programme.

4. The 2nd meeting of the Committee was held from 14 to 17 March 1989. The meeting thoroughly examined the proposals made by the Economic Commission for Africa (ECA) and, after several improvements, created two committees to draft the objectives and strategy of the Second United Nations Transport and Communications Decade in Africa and the guidelines for the preparation of its programme. At its close, the meeting decided that it would be necessary for each participant to take these two draft documents back to his or her organization for a thorough debate on the issues involved. Any changes in the draft documents that might result from these internal discussions were to be forwarded to ECA for inclusion in the revised draft document on the Decade.

5. In view of the complexity of the issues involved in the preparation of the programme, the Committee created two sub-committees, in accordance with the recommendations of the Conference Ministers. They are the Resource Mobilization

Committee, which is composed of representatives of the Organization of African Unity (OAU), the African Development Bank (ADB), the United Nations Development Programme (UNDP), the World Bank, the European Community (EC) and ECA; and the Steering Committee on Criteria for the Selection of Projects. The two committees were asked to meet and submit their reports to the 13th meeting of the Inter-Agency Co-ordinating Committee, which was called for June 1989.

6. The 13th meeting was held from 29 to 30 June 1989 to work once more on the objectives, strategies and guidelines for preparation of the Decade. Consideration was given to the reports of the two sub-committees created during the previous meeting, in addition to the document on objectives, strategies and guidelines, which had been revised on the basis of written comments received from some members of the Inter-Agency Co-ordinating Committee.

7. The outcome of this meeting was a further refinement of the strategies and guidelines, which incorporated the terms of reference drafted by the Resource Mobilization Committee. As regards the report of the Steering Committee on Criteria, the meeting decided to expand its membership and extend its work up to November 1989. It was also decided at this meeting that the fourteenth meeting of the Inter-Agency Co-ordinating Committee would be held at Tangiers, Morocco just prior to the 7th meeting of the Conference of Ministers in order to finalize other aspects of the strategies and guidelines for preparation and implementation of the programme.

8. The Resource Mobilization Committee held its 1st meeting in June 1989 to formulate and submit its draft terms of reference to the 13th meeting of the Inter-Agency Co-ordinating Committee for consideration. ADB also accepted the responsibility of chairmanship of the Resource Mobilization Committee. At its second meeting, which took place in early November, just prior to the 14th meeting of the Inter-Agency Co-ordinating Committee, the Resource Mobilization Committee drew up its action plan for the preparatory period as well as for the implementation phase of the programme.

9. An important aspect of the guidelines for the preparation of the programme is the clear definition of criteria for the purpose, on the one hand, of serving as directives for all concerned in initiating prospects and on the other hand, as a reference tool for the lead agency to ensure that projects submitted for inclusion in the programme conform to the global objectives and strategies of the Decade. The Steering Committee on Criteria also met just prior to the 14th meeting of the Inter-Agency Co-ordinating Committee in November 1989 and presented the criteria for the Decade to the Inter-Agency Co-ordinating Committee for consideration and recommendation to the Conference of Ministers for adoption.

10. It was also felt that since the Inter-Agency Co-ordinating Committee is composed of agencies that are deeply involved in the field of transport and communications in Africa, it would be useful to solicit other independent points of view regarding the programme. Thus, a workshop on the problems of development of African transport and communications systems was organized by ECA from 25 to 28 September 1989 at which high-level experts in the field, including practitioners as well as academics, both from within and outside Africa, participated. The

workshop was designed to solicit independent (that is non-governmental and non-Committee) opinions on the development issue. The recommendations of the workshop were submitted to the 14th meeting of the Committee.

11. The Committee subsequently held its 14th meeting in November 1989 at Tangiers in order to finalize its proposed objectives, strategies and guidelines for the Decade with a view to their submission to the Conference of Ministers for approval. In particular, the following sections were further elaborated: definition of criteria for selection of projects; the activities of the Resource Mobilization Committee; the composition and activities of various working groups formed to prepare the programme; the timetable for the preparation of the Decade; and the mechanism for the establishment of national co-ordinating committees as well as their role in the preparation and implementation of the Decade programme by each member State.

12. At its 7th meeting, held at Tangiers from 7 to 16 November 1989, the Conference of Ministers approved the global and sectoral objectives and strategies of the programme as well as a set of guidelines for its preparation. These are summarized in section III of the report. In addition, a timetable for the preparation of the programme was also agreed upon, as shown in section IV below.

13. The Ministers also adopted eight resolutions that will form part of the guidelines for the preparation of the programme. They relate to the programme of the second Decade, the feasibility study on the Regional African Satellite Communication System (RASCOM), implementation of the Yamoussoukro Declaration on a new African air transport policy, transport corridors in Africa, trans-African highways and road safety, maritime transport and air travel security.

14. Following the Tangiers meeting, ECA followed up the Ministers' directives. The first meeting of all co-ordinators of the national co-ordinating committees was held from 6 to 8 February 1990 at ECA. At this meeting the co-ordinators worked out and agreed on a set of guidelines for preparing national programmes for inclusion into the Decade programme.

15. While the national co-ordinating committees are preparing their national strategies, the subregional working groups will hold their first orientation meeting in March at which they will agree on the guidelines for their work. The sub-sectoral working groups will then meet in May to agree on their guidelines and work programme.

16. It is envisaged that national programmes will form the input into the subregional programmes, which will in turn form the input into the sub-sectoral programmes. The first draft of a regional programme should be ready by October 1990.

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III. KEY ELEMENTS OF THE PROGRAMME OF THE SECOND UNITED NATIONS TRANSPORT AND COMMUNICATIONS DECADE IN AFRICA

17. The key elements of the programme preparation, which were approved by the Ministers at Tangiers, are summarized in the sections that follow. The detailed programme is contained in the document of 9 November 1989 entitled "UNTACDA II - Objectives, Strategies and Guidelines" (ECA/DEC/TRANSCOM/67/Rev.4).

A. Goal and objectives

18. A total of 10 global objectives are defined around the overall goal of the programme. These global objectives are further specified for each sub-sector as appropriate. The goal and global objectives are as follows:

1. Goal

19. The goal of the Decade programme is to establish an efficient integrated transport and communications system as a basis for the physical integration of Africa and facilitate national and international traffic, so as to foster trade and the achievement of self-sustaining economic development as called for in the Lagos Plan of Action for the implementation of the Monrovia Strategy for the Economic Development of Africa (A/S-11/14, annex I) adopted in 1980 and subsequent African regional and subregional economic restructuring and development programme.

2. Global objectives

Objective 1

20. Implementation of phased and balanced programme of development and management of transport and communications infrastructure, taking into account particularly the needs and requirements of island and land-locked countries.

Objective 2

21. Rehabilitation, upgrading and maintenance of the most critical elements of the existing infrastructure and equipment so as to improve their efficiency and capacity utilization, as well as prolong their economic life.

Objective 3

22. Improvement of human resource planning, development and utilization in order to enhance the quality and availability of personnel at all levels for efficient management and operations of transport and communications systems.

Objective 4

23. Improvement of operational efficiency, service quality and availability in transport and communications by implementing appropriate policies and administrative measures that will increase their competitiveness, productivity and profitability, while at the same time ensuring social and economic development.

Objective 5

24. Establishment of information systems on transport and communications as a basis for analysis and better management and planning of investments.

Objective 6

25. Development of manufacturing capabilities in order to cope with the rapid changes in technology and conditions in the transport and communications market and to reduce costs and requirements for foreign exchange through the local manufacture of some spare parts, components and equipment.

Objective 7

26. Improvement of transport safety and security as well as the strengthening of transport-related environmental protection measures.

Objective 8

27. Improvement of transport and communications in rural areas where the majority of the population lives and the greatest percentage of economic production takes place.

Objective 9

28. Improvement of urban transport to meet the needs of the rapidly growing urban population.

Objective 10

29. Establishment and strengthening of inter-regional liaisons in the field of transport and communications.

B. Strategy

30. In drawing up the programme for the Decade, full account should be taken of the macro-economic environment in which the programme fits. This environment defines the constraints within which the programme will be implemented. Thus, for the success of the programme, the following general strategy is proposed.

Focus

31. The programme should be focused on the key problem areas that require regional/subregional co-operation for their solution.

Flexibility

32. A reasonable degree of flexibility should be built into the programme to allow correction and re-orientation as needed during its implementation. It is proposed that a review of the programme be carried out every two or three years, in addition to a mid-term in-depth evaluation in 1995.

Promotion of the programme

33. The programme and activities must be promoted well in order to publicize the Decade. It is suggested that all means of communication be used: facilities of the Union of National Radio and Television Organization of Africa (UNRTNA); newsletters; publications; press conferences at launching; intergovernmental organizations and UNDP country offices.

Survey of transport and communications in Africa

34. A general survey on transport and communications in Africa will be conducted in order to update information on the level of development. Similar surveys will be conducted at the mid-point and end of the programme as a basis for evaluating the progress achieved during the Decade.

Monitoring mechanism

35. ECA, as lead agency for the programme, should set up a mechanism for monitoring the implementation of the programme. In this regard, the UNDP country offices could play an important role by providing ECA with information regarding projects, national plans and funding secured for implementing national projects.

Multisectoral approach

36. The programme must be designed in order to respond to some specific demands from other sectors, such as agriculture, mines, population, industry and trade.

Responsibility for projects

37. National Governments will have the responsibility to identify, formulate, negotiate, finance and implement regional, subregional and national projects with regional and subregional impact of both pre-investment and investment nature. International organizations may also initiate projects and programmes in their fields of competence in collaboration with the States, subregional and regional organizations and ECA. In addition, subregional and regional organizations will have the same responsibilities in respect of selected subregional investment projects; more and more pre-investment subregional projects should be assigned to subregional and intergovernmental specialized organizations for implementation.

ECA will be responsible for co-ordinating all projects and programmes in order to ensure consistency with the objectives of the Decade and avoid duplication of effort.

38. Collection of information may be achieved by requiring that project submissions include statistics on the development of the sector in the country as well as information on related projects. Additionally, the national co-ordinating committee should be required to pro ide regular information on projects and statistics on development indicators.

39. The lead agency, with the guidance of the Resource Mobilization Committee, will review and harmonize the strategies and programme to make sure they are in line with the objectives of the Decade and the selection criteria.

40. In addition to the above general considerations, the aspects of the strategy concerning criteria for project selection, co-ordination of the programme at national level, mobilization of resources, and the organization of working groups to prepare the programme are further elaborated in the following sections.

1. Criteria for selection of projects

41. It is understood that basically there will be two types of projects: capital projects and non-capital projects, the latter comprising projects addressing policy reform measures, institutional strengthening and development capabilities, research, training and human resources development, development of transport data and detailed engineering studies. In designing and preparing Decade projects, particular attention will be given to:

(a) Promotion of national socio-economic development and impact of projects on subregional or regional integration;

(b) Generation of local expertise and the increase of national capacity by using, as much as possible, local human and other resources;

(c) Promotion, as far as possible, of the integration of women and youth in development;

(d) Development of appropriate technology and transfer and adaptation of foreign technologies, at the lowest possible cost.

42. Specifically, all projects to be included in the programme of the Decade must meet the following criteria:

(a) They must contribute towards one or several objectives of the Decade;

(b) They must be included in the national development plans or programmes;

(c) In the case of capital projects, they must demonstrate social, economic and technical feasibility and/or other demonstrable benefits;

(d) Projects must conform to environmental policies and programmes;

(e) The existence of appropriate and adequate institutional capability to carry out the project must be demonstrated;

(f) Both recurrent costs and the local component of capital costs must be clearly established and their financing adequately provided for;

(g) In addition to the criteria listed above, which apply to both national and regional projects, the following criteria should also apply to regional and subregional projects:

(i) The project must be included in the work programme of an intergovernmental organization, a United Nations specialized agency or other similar body and must demonstrate that the countries have been involved in its formulation and have expressed their commitment to its implementation;

(ii) The project must involve more than one country and promote subregional or regional co-operation and integration.

2. National co-ordinating committees

43. In accordance with the general strategy set out, a national co-ordinating committee will be set up in each country to be the focal point for co-ordinating subregional and regional programmes with the national programme. It should comprise:

(a) Representatives of government departments, particularly ministers responsible for economic planning, transport, telecommunications, postal services, broadcasting and environment;

(b) Operators of transport and communications infrastructures and related services;

(c) Participants in the transport and communications industries (transporters, freight carriers, manufacturers and other suppliers of services);

(d) Various groups and users.

44. These groups will be made up of people who have high-level experience in the sector and who deal, in their activities, with problems relating to the transport and communications sectors.

45. Each country will designate a national co-ordinator who will be responsible for directing the activities of the national co-ordinating committee. The national co-ordinating committee will be the focal point for co-ordinating all activities related to transport and communications sectors. It is expected that the committee will carry out its work in close collaboration with the UNDP office, which will be able to participate actively in the activities of the committee.

46. During the period of preparation it should:

(a) Assist the country in the preparation of papers outlining the country sectoral strategies and objectives and integrate them with those aspects of the Decade's objectives which are relevant to their own ongoing or emerging national transport and communications policies and sectoral development plans, on the basis of guidelines given to the subregional working groups;

(b) Ensure that the competent authorities of its country accord the right priority to programmes and projects geared towards the attainment of the Decade objectives;

(c) Provide the lead agency and subregional organizations with information on the national transport and communications sectors.

47. During the implementation phase, the national co-ordinating committee should:

(a) Assist the Government in the establishment of sectoral priority programmes and projects, particularly those leading to the attainment of the Decade objectives;

(b) Assist the Government and the Resource Mobilization Committee to search for local financing for the priority projects and programmes of the Decade;

(c) Co-ordinate the execution of the national programmes and projects, in relation with the subregional organizations;

(d) Provide ECA, through UNDP, with progress reports necessary for the follow-up and implementation of the Decade programme.

48. The national co-ordinating committee should also, on a permanent basis:

(a) Formulate appropriate recommendations on the policy, planning and co-ordination of the transport and communications sectors, for the purpose of harmonizing the government action in these sectors to contribute more effectively to the economic development of the country and to the economic integration of Africa;

(b) Collect and disseminate, after adequate processing, information on the transport and communications sectors;

(c) Promote the search for the development of technology and technical innovation and enhance the role of professional associations in the transport and communications sectors and related activities.

49. In order to ensure that the national activities are conducted at an approximately equivalent level of expertise and at about the same time, it is desirable that close consultations be carried out between each country. The national co-ordinating committee will be considered part of the co-ordination

mechanism for the implementation of the Decade and, therefore, will be provided with guidelines, technical support and other relevant information.

50. It is also suggested that each country should initially focus on a limited number of objectives. The achievement of early results in the fields related to these objectives will provide the stepping stones for subsequent broadening of the scope of activities during the remaining period of the Decade.

3. Mobilization of resources

51. The Resource Mobilization Committee is, above all, charged with the effective marketing of the Decade programme. To this end, it will strive to establish methods for effective mobilization of resources for the programme.

52. Among other things, it will aim, during the preparatory period, 1989-1990:

(a) To advise the lead agency and the Inter-Agency Co-ordinating Committee on the guidelines for the preparation of the programme of each agency or group of agencies, on the follow-up of the preparatory activities and on the co-ordination and harmonization of their programmes;

(b) To search for financial and technical resources for assisting agencies or group of agencies with the preparation of their Decade programmes;

(c) To sensitize member States to the need to give the highest priority to projects geared to achieving the key objectives of the Decade and to include the projects in their national priority programmes.

53. During the Decade period, the work of the Resource Mobilization Committee will be to:

(a) Recommend to the Inter-Agency Co-ordinating Committee those projects which should be accorded higher priority in view of the prevailing macro-economic environment in Africa and the resulting financial constraints as well as the development needs of the Sector;

(b) Actively promote the programme and priority projects within and outside Africa by, inter alia, disseminating information on Decade projects among the various financing institutions;

(c) Mobilize financing for national projects by organizing donor conferences and by motivating and raising awareness of major financial institutions and agencies of the need to finance these projects, through workshops, seminars and roundtables;

(d) Continue to sensitize member States to accord priority to the Decade programme and projects geared to achieving development of rural areas and also to assist member States in the preparation of national projects which aim at achieving the above-mentioned areas and overall objectives of the Decade;

(e) Search for financing for the implementation of regional projects (involving two or more member States) that have demonstrated economic viability;

(f) Search for financing for the implementation of the priority projects and activities of the various agencies and subregional economic and regional specialized organizations with the aim of achieving the Decade objectives;

(g) Undertake regular reviews of resource mobilization efforts and to submit its reports and recommendations to the Conference of Ministers through the Inter-Agency Co-ordinating Committee;

(h) Prepare annual reports on the impact of the financial and macro-economic conditions on the development of the transport and communications sectors in Africa and to submit such reports to the Inter-Agency Co-ordinating Committee for consideration and distribution to member States.

4. Working groups

54. Two types of working groups will be established: four subregional and seven subsectoral working groups whose tasks will be to assess the existing situations, identify bottle-necks impeding the realization of the Decade objectives, recommend strategies (policy reforms, institution building, studies, investments), identify whenever possible quantifiable goals and time phases, as well as propose measurable indicators and prepare the programme.

(a) Subregional working groups

Eastern and Southern:	ECA, OAU, Preferential Trade Area (PTA), Southern African Development Co-ordination Conference/Southern African Transport and Communications Commission (SADCC/SATCC), Economic Community of the Great Lakes Countries (CEPGL), Organization for the Management and Development of the Kagera River Basin (KBO), Intergovernmental Authority on Drought and Development (IGADD), Indian Ocean Commission, Northern Corridor Authority.
Central Africa:	ECA, OAU, Economic Community of Central African States (ECCAS), CEPGL, Central African Customs and Economic Union (UDEAC), Lake Chad Basin Commission, Permanent Interstate Committee for Drought Control in the Sahel (CILSS), Ministerial Conference of West and Central Africa for Maritime Transport (MINCONMAR).
West Africa:	ECA, OAU, Economic Community of West African States (ECOWAS), Mano River Union (MRU), West African Economic Community (CEAO), Organization for the Development of the Senegal River (OMVS), Organization for the Development of the Gambia River (OMVG), CILSS, MINCONMAR, Lake Chad Basin Commission, Liptako Gourma Authority, African Postal and Telecommunications Union (UAPT).

North Africa: There is no economic community organization covering all the countries for this subregion. ECA, OAU and the newly created Maghreb Arab Union will prepare the programme in consultation with the other non-Maghreb countries.

(b) Subsectoral working groups

(i) Roads: ECA, World Bank, OAU, ADB, Trans-African Highway Authorities, International Labour Organisation (ILO), UNDP, United Nations Conference on Trade and Development (UNCTAD).

(ii) Railways: ECA, World Bank, Union of African Railways (UAR), OAU, ADB, ILO, UNDP, UNCTAD.

(iii) Air transport: ECA, African Civil Aviation Commission (AFCAC), African Airlines Association (AFRAA), International Civil Aviation Organization (ICAO), OAU, UNDP, ADB, Agency for the Security of Air Navigation (ASECNA), NCATO.

(iv) Maritime, inland water and multimodal transport: ECA, UNCTAD, International Maritime Organization (IMO), MINCONMAR, Institute for Security and Co-operation in Outer Space (ISCOS), OAU, UNDP, Port Management Associations, ILO, African Maritime Transport Association (AMTA), ADB, World Bank.

(v) Telecommunications and broadcasting: ECA, International Telecommunication Union (ITU), Pan-African Telecommunications Union (PATU), OAU, ADB, UNDP, United Nations Educational, Scientific and Cultural Organization (UNESCO), URTNA.

(vi) Postal services: ECA, Universal Postal Union (UPU), Pan-African Postal Union (PAPU), OAU, UNDP.

(vii) Urban transport: ECA, OAU, World Bank, Africa Section of the International Bus Owners Association, UAR, UNDP.

55. ECA will convene the first meeting of each working group, at which the working group will elect its leader who will have the responsibility for directing its work. ECA, in consultation with the leader of the working group, will convene subsequent meetings of the working group.

56. The subregional working groups shall be free to seek technical support of any specialized agency. Similarly, the subsectoral working groups shall be free to invite international subsectoral non-governmental organizations to participate in their meetings, such as the International Air Transport Association (IATA), the International Road Federation (IRF), the International Association of Lighthouse Authorities (IALA), the International Association of Ports and Harbours (IAPH), the International Railway Union (IRU), and others.

IV. TIMETABLE FOR THE PREPARATION OF THE PROGRAMME

57. In approving the objectives, strategies and guidelines, the Ministers set the following timetable for the preparation and launching of the programme.

Date	Activities
December 1989	Lead agency distributes guidelines for working groups and criteria for project selection together with a timetable for preparatory activities to all agencies and governments.
January-February 1990	First meeting of the working groups to draw up their work programmes and distribute work among their members.
March-April 1990	Resource Mobilization Committee assists working groups identify their technical assistance needs and proceeds to seek such assistance.
July-August 1990	Subregional working groups meet in their respective subregions to prepare their strategies.
October-November 1990	Subregional meeting of member States, subregional working groups and sectoral working groups to combine the various strategies into a single strategy for each subregion.
December 1990	Eighth meeting of the Conference of Ministers to review progress in the preparation of the programme.
January 1991	Regional meeting comprising subregional organizations, specialized agencies and sectoral intergovernmental organizations to consolidate the strategies and programmes for the preparation of the programme.
March-April 1991	Meetings of the Inter-Agency Co-ordinating Committee and the Conference of Ministers to approve the programme of the first phase of the Decade.
April 1991	ECA Conference of Ministers to approve the Decade.
July 1991	Economic and Social Council to review and forward the Decade programme to General Assembly.
September 1991	General Assembly to launch the Decade.

V. CONCLUSION

58. In approving the preparatory activities for the Decade, the Ministers re-emphasized the need to closely involve the member States in all phases of the programme and also to promote the use of African experts. In this regard, the working groups will prepare their strategies and programmes in close collaboration with the member States.

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DEVELOPMENT AND INTERNATIONAL ECONOMIC CO-OPERATION: INTERNATIONAL CO-OPERATION IN TAX MATTERS

Work of the Ad Hoc Group of Experts on International Co-operation in Tax Matters

Report of the Secretary-General

SUMMARY

The present report contains a brief account of the discussions of the Ad Hoc Group of Experts on International Co-operation in Tax Matters at its fifth meeting. A set of recommendations made by the Ad Hoc Group was directed to the international tax administrations of developed and developing countries to enable them to enhance the formulation and application of double taxation treaties, to maximize tax compliance, improve tax equity, decrease and/or eliminate tax evasion and avoidance, and to promote international co-operation in tax matters (see paragraphs 7, 8, 9, 12, 14 and 15 of the report). Attention is drawn to paragraph 16 of the report in which the Ad Hoc Group considered the possibility of increasing the membership of the Group to include a few experts from the centrally planned economy countries.

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INTRODUCTION

1. This report has been prepared pursuant to Economic and Social Council resolution 1980/13 of 28 April 1980 in which the Council requested the Secretary-General to report on the progress of the Ad Hoc Group of Experts on International Co-operation in Tax Matters. The fifth meeting of the Ad Hoc Group of Experts was held at Geneva from 6 to 12 December 1989.

2. The Ad Hoc Group considered the following questions:

(a) Mutual consultation procedure;

(b) Monitoring the impact of the United Nations Model Double Taxation Convention on bilateral negotiations;

(c) Tax sparing relief;

(d) Other topics: a brief discussion of any other topics members wish to bring to the attention of the Group of Experts;

(e) Arrangements for the next meeting.

Brief outlines of those questions are provided in section I below. The discussions in full will appear in a forthcoming United Nations publication entitled Report of the Ad Hoc Group of Experts on International Co-operation in Tax Matters on the Work of its Fifth Meeting.

I. SUBSTANTIVE MATTERS

A. Mutual consultation procedure

3. The mutual consultation procedure (also called the mutual agreement or the competent authority procedure) is an opportunity provided to a taxpayer under article 25 of the 1979 United Nations Model Double Taxation Convention between Developed and Developing Countries for obtaining redress from possibly unfair tax treatment. Under the provisions of article 25, a taxpayer who feels that he has suffered tax in a manner that is not in accordance with the relevant tax treaty can ask the competent authorities of his State to call upon the competent authorities of the other contracting State in order, if possible, to get his due tax treatment amended so as to remove his grievance.

4. The Ad Hoc Group discussed the mutual consultation procedure with special emphasis on the manner in which the time limits affect the efficient operation of the procedure. Two aspects of the question of time limits were discussed and also emphasized as being of considerable importance. One was the time limit within which the procedure must be invoked. The other was other time limits in the domestic law of the contracting States which interfere with the ability of the competent authorities to give effect to any results achieved.

5. Comments made by the members of the Ad Hoc Group on the mutual agreement procedure showed that the greater number of cases involving the procedure had arisen between countries that had a high volume of trade with and investment in each other, so that in general, it was a process that had been most frequently used between developed countries. The greater geographical distance between most developed and developing countries had tended to make the use of the mutual consultation procedure in such cases more difficult and more costly than in cases between developed countries.

6. After discussing several other aspects of the mutual agreement procedure, the Ad Hoc Group nevertheless recommended that competent authorities should be prepared to make more use of the procedure in future, since it gave the taxpayer an assurance that, if difficulties arose concerning the application of a tax treaty, the assistance of the competent authorities of both contracting States could be enlisted to solve tax problems.

7. The Group recommended that tax authorities should endeavour to obviate, as far as possible, the neeed for invoking the procedure by publicizing, to those likely to be affected by them, their tax rules and practices.

8. In addition the Group recommended that for that purpose, among others, competent authorities should provide each other with the fullest possible information, not only of changes in their tax law but also of official publications, explanatory pamphlets and published rulings relating to their tax laws, regulations, policies and practices.

9. The Group recommended that competent authorities should approach requests to enter into the mutual agreement bearing in mind that the procedure was designed in the first place to protect the taxpayer. The authorities should be as flexible as possible, within the relevant law, to ensure that the taxpayer is treated in conformity with the treaty, and should make every effort to carry out the procedure as quickly as possible, where the taxpayer's request to begin it seems to the authorities to be justified.

B. Monitoring the impact of the United Nations Model Double Taxation Convention on bilateral negotiations

10. The United Nations Model Double Taxation Convention, adopted by the United Nations in 1979, differs from the Model Double Taxation Convention on Income and on Capital of the Organisation for Economic Co-operation and Development in that some provisions in certain of its articles take into account the conditions of developing countries. The monitoring of the impact of the United Nations Model was undertaken in keeping with the terms of reference of the Ad Hoc Group of Experts, one of the provisions of which requires a continuing examination of the United Nations Model Double Taxation Convention between Developed and Developing Countries and consideration of the experience of countries in bilateral application of that Model Convention. Since the objectives of the continuing review were to identify particular problems encountered in the course of working with the model and possible solutions, to clarify the meanings of phrases shown to be imprecise, to

illuminate the different views that might be taken of particular concepts or terms and to indicate possible compromises if the negotiating partners either could not accept the model as it stood or could not accept the other country's alternative, the Ad Hoc Group decided to keep the topic as a permanent item on the agenda for all subsequent meetings until further notice.

11. Members of the Ad Hoc Group commented on the problems surrounding the meaning of the term "permanent establishment" as defined in article 5 of the United Nations Model Convention, specifically concerning deliveries; the furnishing of services; construction or building site, or installation project; dependent and independent agents; non-discrimination, and short-term threshold rules provided in article 5 of the United Nations Model Double Taxation Convention, where the limited force of attraction rule of article 7 of the same model is used. They also discussed, among other things, branch profits tax, shipping and aircraft profits tax and aspects of business profits (article 7 of the United Nations Model) in connection with the characterization and treatment of income from the rental of tangible movable property. While the Ad Hoc Group of Experts did not arrive at unanimously agreed solutions to all the matters discussed under the monitoring of the impact of the United Nations Model Double Taxation Convention, useful clarifications of the issues, phrases, terms and concepts were proposed and several guidelines were recommended for dealing with problems that might arise in the course of bilateral tax treaty negotiations.

C. Matching relief for tax spared (tax sparing)

12. Tax sparing relief or matching relief for tax spared is tax credit granted usually by a developed country to a developing country and embodied in the bilateral tax treaty between them for foreign income taxes that have already been spared by the developing country as part of the incentives to encourage inward foreign investment and its economic development. Included in the objectives of tax sparing credit are both the prevention of double taxation and/or the collection of excess tax, especially in developing countries with fairly high income tax rates. The Ad Hoc Group of Experts discussed tax-sparing policies and practices of the following developed countries: Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Japan, the Netherlands, Norway, Spain, Sweden, the United Kingdom and the United States of America. The Ad Hoc Group considered that the discussions would be useful to bring to the attention of tax administrations the ways in which certain countries provided matching credit for tax spared and the circumstances in which they would agree to do so under tax treaties.

D. Substantive work for the sixth meeting

13. The Ad Hoc Group decided to consider at its sixth meeting undertaking the following substantive tasks:

(a) The procedures, processes and modalities of exchanges of information under tax treaties, how such exchanges between developed and developing countries may be improved and enlarged and examples of types of cases in which such exchanges may be of special value;

(b) Problems arising out of the taxation of income from the transfer of technology, including patents and other forms of intellectual property, the provision of technical services and related topics;

(c) The impact of the United Nations Model Double Taxation Convention on the negotiation and application of bilateral tax treaties with special reference to:

(i) The meaning, in Article 7(1) of the Model, of "sales ... of goods or merchandise of the same or similar kind as those sold through that, 'permanent establishment', and "other business activities carried on ... of the same or similar kind as those effected through that permanent establishment";

(ii) Articles 10 (Dividends), 11 (Interest) and 12 (Royalties, etc.) of the model, including, in relation to Article 10, the concept of a branch profits tax;

(d) The collection and exchange of information about the organization of national tax administrations and the channels for communication between them.

Members of the Group agreed to prepare brief notes on these topics. The Group agreed that all material submitted should reach the Secretariat by the end of December 1990.

14. It should be noted that the objective of the discussion and examination of the topics would be to provide assistance and/or guidelines in the formulation and application of double taxation treaties between developed and developing countries.

E. Other matters

15. In order to assist the more rapid and useful dissemination of the information contained in their reports, the Ad Hoc Group recommended that the reports be circulated directly, as well as through diplomatic missions, to members of the Group, observers at its meetings and tax ministries (for forwarding to their tax administrators and tax treaty negotiators). The Group also recommended that the United Nations Secretariat prepare and disseminate, on a current basis, updated lists of addresses and structures of tax offices of Member States of the United Nations. Such actions would, in keeping with the terms of reference or mandates of the Group (see paras. 17 and 18 below), contribute to the enhancement of both the efficiency of tax administrations and the promotion of international co-operation in tax matters.

16. The Ad Hoc Group of Experts considered the possibility of increasing the membership of the Group by including experts from centrally planned economy countries. Since a number of those countries had concluded double taxation treaties with some developed and developing countries, it was conceivable that not only would the participation of those experts provide an opportunity for a useful exchange of experience but it would also contribute to the broadening of the scope of the principles, rules and guidelines evolved in the course of the meeting of the Group and could enhance international co-operation in tax matters. The Ad Hoc

Group felt that it would recommend that the Economic and Social Council would give consideration to the issue.

F. Future Work of the Group

17. It may be recalled that the terms of reference of the Ad Hoc Group of Experts on International Co-operation in Tax Matters, as defined in Economic and Social Council resolutions 1980/13 of 28 April 1980 and 1982/45 of 27 July 1982, included the following:

(a) Formulation of guidelines for international co-operation to combat international tax evasion and avoidance;

(b) Continuing examination of the United Nations Model Double Taxation Convention between Developed and Developing Countries and consideration of the experience of countries in bilateral applications of that Convention;

(c) Study of the possibilities of enhancing the efficiency of tax administrations and formulation of appropriate policy and methodology suggestions;

(d) Study of the possibilities of reducing potential conflicts among the tax laws of various countries and formulation of suggestions for appropriate policies and methods.

18. Since it is an objective of the Group to promote international co-operation between developed and developing countries in tax matters, in order to encourage the flow of resources to developing countries while fully safeguarding the revenue interests of both groups of countries, the role of the Group includes the following concrete tasks:

(a) To examine periodically the United Nations Model Double Taxation Convention between Developed and Developing Countries, to propose explanations and guidelines, as appropriate, and put forward proposals for revisions of the Convention, as necessary;

(b) To undertake an analysis of double taxation agreements between developed and developing countries with a view to finding solutions to problems that arise in the application of the tax treaties, with special reference to the United Nations Model Double Taxation Convention and with particular reference to those problems that are specific to relations between developed and developing countries;

(c) To examine and analyse the functioning of double taxation agreements with a view to finding solutions to problems, such as the appropriate adjustments to be made for tax purposes to transfer prices and the protection of taxpayers from economic double taxation by way of corresponding adjustments, the abuse of tax treaty provisions and other matters;

(d) To examine the adequacy of opportunities for and means of exchanging information necessary for the implementation of double taxation agreements,

including the prevention of evasion and the investigation of legal avoidance devices and the recovery of tax debts and enforcement of liabilities;

(e) To consider the improvement of machinery for the settlement of disputes that arise from the functioning of double taxation agreements;

(f) To undertake the comparative analysis of selected aspects of tax administration in developed and developing countries with a view to identifying problems for which international co-operation is an efficient solution and to make proposals for such a solution;

(g) To examine and analyse tax measures that may help to encourage effective investment in developing countries in a way that is satisfactory to both groups of countries;

(h) To undertake other steps conducive to the promotion of international co-operation in tax matters.

19. In keeping with the above, it is the view of the Secretariat that the following subjects should be considered by the Group in the future:

(a) Problems arising from tax treaties in connection with the taxation of the earnings of migrant workers;

(b) Problems arising out of transfer pricing, the exchange of information, the relationship of withholding tax on gross sums and the credit relief applicable to the net profit component, comparison and contrast of national procedures for the assessment and collection of tax (including appeal arrangements and procedure), comparison of national tax laws and practices and the prevention of tax evasion, treaty shopping and the countering of avoidance.